

**United States Department of Labor
Employees' Compensation Appeals Board**

A.C., Appellant)	
)	
and)	Docket No. 17-0384
)	Issued: September 11, 2017
U.S. POSTAL SERVICE, POST OFFICE,)	
Grosse Pointe, MI, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 12, 2016 appellant, through counsel, filed a timely appeal from an October 18, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has established disability commencing September 14, 2015 due to her accepted July 27, 2015 employment injury.

FACTUAL HISTORY

On July 27, 2015 appellant, then a 25-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained an injury on her route when she twisted her wrist after falling and landing on it. She also noted that she hit her head and back. Appellant stopped work on July 28, 2015. In an accident report dated July 28, 2015, the employing establishment indicated that while delivering mail, a dog ran from a backyard and jumped on appellant and knocked her down. The report noted that appellant fell back and hit her head on the curb.

Appellant received medical treatment from multiple professionals at Concentra Medical Center. In a July 27, 2015 report, Dr. Devone Mansour, an osteopath specializing in orthopedic surgery, noted that appellant was injured that day due to a dog attack. He examined her and assessed her with a contusion of shoulder, elbow, and wrist. In a July 27, 2015 work activity status report, Dr. Mansour indicated that appellant could return to work on July 28, 2015 with restrictions.

On July 29, 2015 appellant saw Dr. David Hazel, a Board-certified family practitioner. Dr. Hazel noted that appellant was returning for a recheck of injuries that occurred when she was attacked by a dog several days ago. He noted that she had complaints of pain in her left shoulder and left arm. Dr. Hazel noted that the physical therapist had assessed appellant on that date with cervical strain, contusion of shoulder, contusion of left elbow, and contusion of left wrist.

Appellant continued treatment with physicians at Concentra Medical Center. In a July 31, 2015 report, Dr. Alina Lukose, a Board-certified family practitioner, diagnosed appellant with cervical strain, contusion of left elbow, contusion of shoulder, and contusion of wrist. In an August 14, 2015 report, Dr. Hazel returned appellant to modified work activity. He noted that she could lift up to 15 pounds occasionally, push/pull up to 20 pounds occasionally, but could not reach above the shoulder with the affected extremity. In an August 24, 2015 report, Dr. Hazel diagnosed cervical strain and released appellant from care to return to work full duty. Appellant returned to full duty on August 25, 2015.

On September 4, 2015 OWCP accepted appellant's claim for contusion of left shoulder, contusion of left elbow, contusion of left wrist, and cervical strain. In a September 4, 2015 note of a telephone call, it indicated that the employing establishment indicated that she returned to full-time duty on August 25, 2015.

OWCP received two medical reports dated September 10, 2015, both from physicians at Concentra Medical Center. Dr. Hazel signed his report at 2:29 p.m. He noted that he saw appellant for neck pain. Dr. Hazel indicated that he did not believe that her complaints arose out of her work duties, and he released her to return to full work duties with no restrictions. In a report signed at 8:49 p.m. on the same date, Dr. John Nelson, a family practitioner, assessed

appellant with cervical strain and left cervical radiculopathy. He noted that she had a recurrence of her neck pain and was wearing a soft collar. Dr. Nelson indicated that appellant was discharged to work without restrictions but experienced a recurrence of neck pain and went to the local emergency department. He dispensed medication, and listed “no work.”

On September 23, 2015 appellant filed a claim for compensation (Form CA-7) for the period September 14 through 18, 2015. The employing establishment indicated that appellant received continuation of pay from July 28 through September 10, 2015, and used annual leave from September 11 through 13, 2015. Appellant filed subsequent claim forms for continuing compensation on October 30 and November 16, 2015. In these forms, the employing establishment indicated that there was no work available within appellant’s restrictions.

By letter dated September 29, 2015, OWCP advised appellant that further medical evidence was necessary to establish her claim for wage-loss compensation benefits. It afforded appellant 30 days to submit the necessary information.

A September 20, 2015 magnetic resonance imaging (MRI) scan of the cervical spine was interpreted by Dr. Nelson as showing no acute fracture, disc herniation, central canal stenosis, or neural foramen narrowing; straightening of the normal lordotic curvature; prominence of the adenoids, and bilateral palatine tonsils; and prominent mucous retention cysts within the bilateral sphenoid sinuses.

In reports dated September 21 and 28, 2015, Dr. Tyra McKinney, a Board-certified family practitioner, noted that appellant presented with neck pain. She noted that appellant indicated that she was injured when she was attacked by a dog and fell and hit her head. Dr. McKinney indicated that she stated that her neck pain was 9/10. She listed appellant’s diagnoses as cervical strain, left cervical radiculopathy, and neck pain. Dr. McKinney returned appellant to modified work on the same date.

In an October 1, 2015 report, Dr. Peter Biglin, a Board-certified physiatrist, noted a July 27, 2015 injury and listed diagnoses of left cervical facet mediated pain/whiplash injury from falling and hitting curb; resultant left occipital neuritis; and left shoulder bursitis subacromial with intact rotator cuff. He noted that appellant had a normal MRI scan. Dr. Biglin recommended continuing physical therapy and medication and work restrictions, including restrictions on lifting over 5 pounds and not pushing/pulling more than 10 pounds. Appellant also submitted additional physical therapist’s reports.

In an October 15, 2015 statement, appellant stated that she was injured at work on July 27, 2015 and had received treatment at Concentra Medical Center from at least four doctors. She indicated that Dr. Hazel determined on August 24, 2014 that she could return to work with no restrictions and she went back and attempted to work, but on September 8, 2015 she was rushed to the hospital for numbness of her left side. Appellant noted she returned to Concentra Medical Center where Dr. Nelson requested a cervical spine MRI scan, and then she was seen by Dr. McKinley, who sent her to a specialist. She stated that she has not been able to perform any of her job duties because of her restrictions.

In an October 22, 2015 report, Dr. Biglin diagnosed left cervical strain, likely facet-mediated whiplash injury with a normal MRI scan, and left shoulder bursitis without evidence of rotator cuff tear on examination. He noted that appellant was complaining of 9/10 pain. Dr. Biglin noted a normal electrodiagnostic study. He indicated that appellant should continue physical therapy.

In a November 17, 2015 recheck report, Dr. Biglin noted that a recent MRI scan showed left shoulder bursitis/rotator cuff tendinitis without an obvious tear on physical examination and small linear tear questionable on MRI scan.

By decision dated December 10, 2015, OWCP denied appellant's claim for compensation commencing September 18, 2015 as it determined that the evidence of record did not establish disability due to appellant's accepted employment-related conditions.

By letter, received by OWCP on December 24, 2015, appellant requested an oral hearing before an OWCP hearing representative.

In a February 3, 2016 report, Dr. David H. Mendelson, a Board-certified orthopedic surgeon, reviewed the history of the July 27, 2015 employment injury, noted that appellant received conservative treatment from physicians at Concentra Medical Center, and conducted a physical examination. He noted that appellant had limited range of motion of the cervical spine and increased discomfort with side-to-side motion and limited flexion and extension. Dr. Mendelson diagnosed bilateral shoulder pain neck pain, and suspect cervical radiculopathy. He noted that appellant was pregnant, but was in significant pain and would like something done if possible, so he sent her for an additional MRI scan and upper extremity electromyogram (EMG).

In a February 10, 2016 report, Dr. Wednesday Hall, an osteopath specializing in pain medicine and an associate Dr. Mendelson, diagnosed low back pain and neck pain. She indicated that as appellant was pregnant, there was not much she could do for her. Dr. Hall noted that she would like appellant to restart therapy. She also noted that it was unlikely that appellant would undergo a new MRI scan or other x-ray imaging at this time due to her pregnancy, but these tests may be considered after delivery.

On March 9, 2016 appellant saw Dr. Andres Munk, a Board-certified orthopedic surgeon, who diagnosed likely cervical radiculopathy and probable rotator cuff disease. He discussed her injury, and noted that she was attacked by a dog. Dr. Munk noted that appellant had not been able to work since that event. He ordered an additional MRI scan, but asked her to clear it with her obstetrician.

On March 22, 2016 Dr. Michael J. Paley, a Board-certified radiologist, interpreted a left shoulder MRI scan as showing intraspinal tendinitis. In a cervical spine MRI scan of the same date, he noted straightening of the cervical lordotic curve and mucous retention cyst of the sphenoid sinus.

In a March 23, 2016 report, Dr. Mendelson diagnosed left shoulder rotator cuff tendinitis. He noted that appellant was pregnant and was due in July, but that she was in excruciating pain with her arm being most symptomatic. Dr. Mendelson noted that she had numbness and tingling

down her upper extremity and difficulty with overhead activity. He noted more neck pain and shoulder symptoms. Dr. Mendelson gave appellant an injection for pain. He noted that appellant should maintain work restrictions of no lifting over five pounds, no pushing or pulling of over five pounds, and no overhead activities.

In an April 8, 2016 report, Dr. Munk diagnosed nonspecific neck pain. He noted that, based on appellant's MRI scan, her pain was most likely soft tissue in nature. Dr. Munk also noted that he would refer appellant for physical therapy, and that she would be seen by Dr. Hall for possible injections, although this might not occur as appellant was pregnant.

In an April 27, 2016 report, Dr. Mendelson diagnosed appellant with left shoulder rotator cuff tendinitis by MRI scan, and cervical radiculopathy. He opined that her neck was her primary problem, and indicated that she was limited on medications due to her pregnancy. Dr. Mendelson noted that appellant should maintain her work restrictions.

In a May 18, 2016 report, Dr. Munk, again indicated that appellant had neck pain, most likely soft tissue in nature. He noted that as she was eight months pregnant her options were limited, but she could try a simple soft collar.

By letter dated June 27, 2016, OWCP informed appellant that her claim was accepted for tear of medial meniscus of left knee and sprain of left knee and leg.

In an August 3, 2016 report, Dr. Munk listed his impressions as neck pain. He noted that appellant's neck pain had improved since having her baby in July. Dr. Munk gave her a prescription for therapy.

At the hearing held on August 23, 2016, appellant testified that she resumed regular duty on or about August 24, 2015, at which time she returned to a mounted route. Appellant noted she had to do overtime on a walking route. She stated that she worked for four to five days per week. Appellant noted that she never had a specific doctor at Concentra Medical Center. She stated that she was off work for a couple of days and then a treating physician noted that she could return with restrictions, but she did not return to work because the employing establishment had no work for her within the restrictions. Appellant noted that she gave birth on July 23, 2016. She stated that she was now being treated by Dr. Mendelson.

In a September 7, 2016 report, Dr. Mendelson diagnosed left shoulder rotator cuff tendinitis and bursitis with some impingement and underlying cervical radiculopathy. He indicated that had she not fallen, she would not have this problem. Dr. Mendelson noted that appellant also had a problem with her neck which had been more of a source of discomfort and had continued to bother her. He noted that she was having trouble carrying things around the house and that she had restrictions of five pounds lifting and could lift nothing over the shoulder level. Dr. Mendelson indicated that he was going to maintain her restrictions and noted that he believed that these restrictions were related to the fall she described when she was attacked by the dog.

By decision dated October 18, 2016, the hearing representative affirmed OWCP's December 10, 2015 decision. She noted that without a medical opinion from a physician

explaining how appellant's accepted work injury could objectively disable her from her regular work duties, the compensation claim had not been established.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ The term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁵

Whether a particular injury causes an employee to be disabled and the duration of that disability are medical issues which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.⁶ Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work. When a physician's statements consist only of a repetition of the employee's complaints that excessive pain caused an inability to work, without making an objective finding of disability, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁷ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

OWCP procedures recognize that if an alleged recurrence occurs less than 90 days after a return to light or full duty, the claimant is not required to produce the same evidence as for a recurrence claimed long after apparent recovery and return to work. Therefore, in cases where recurring disability from work is claimed within 90 days or less from the first return to duty, the focus is on disability rather than causal relationship.⁹ The attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work.¹⁰

³ *Supra* note 2.

⁴ *G.T.*, 59 ECAB 447 (2008).

⁵ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

⁷ *Supra* note 4.

⁸ *S.P.*, Docket No. 16-1384 (issued February 1, 2017).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(a) (June 2013). *See also J.S.*, Docket No. 16-0922 (issued September 22, 2016).

¹⁰ *D.K.*, Docket No. 15-665 (issued August 10, 2015).

ANALYSIS

OWCP accepted that as a result of an employment-related dog attack and fall on July 27, 2015, appellant suffered from a contusion of the left shoulder, contusion of the left elbow, contusion of the left wrist, cervical strain, tear of the medial meniscus of the left knee, and sprain of the left knee and leg. Appellant was treated by multiple doctors at Concentra Medical Center for injuries resulting from this attack, including Drs. Mansour, Lukose, and Hazel. In an August 24, 2015 report, Dr. Hazel diagnosed appellant with cervical strain and released her from his care to return to work full duty. Appellant returned to work on August 25, 2016, but pursuant to her testimony, only worked four to five days. She filed a claim for wage-loss compensation beginning on September 14, 2015.

The Board finds that appellant has failed to establish a recurrence of disability with objective medical findings substantiating her inability to perform her work duties.

Because appellant has claimed a recurrence of disability less than 90 days from her first return to duty, she must submit medical evidence which describes the duties which she cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability from work. In cases where recurring disability for work is claimed within 90 days of the first return to duty, the focus is on disability rather than causal relationship of the accepted condition(s) to the work injury.¹¹

Appellant was treated by Dr. Hazel at 2:29 p.m. on September 10, 2015 at Concentra Medical Center, at which time he indicated that she could return to work full duty with no restrictions. However, six hours later appellant saw Dr. Nelson at Concentra Medical Center, who listed appellant as “no work.” Dr. Nelson did not comment on Dr. Hazel’s report from that afternoon, nor did he explain why appellant could not work. The Board further notes that Dr. Nelson indicated that appellant was wearing a soft collar, yet Dr. Hazel made no mention of a collar when he saw appellant earlier that day. Accordingly, the Board finds that Dr. Nelson’s report presented no objective findings to substantiate that appellant could not perform her specific work duties. Because he failed to provide any medical rationale for his conclusion, his opinion regarding appellant’s inability to work is of diminished probative value.¹²

In September 21 and 28, 2015 reports, Dr. McKinney noted that appellant was injured during a dog attack when she fell and hit her head. She assessed appellant with cervical strain, left cervical radiculopathy, and neck pain. She noted that appellant had work restrictions but she did not explain the need for these restrictions, based upon objective medical findings.¹³

Similarly Dr. Biglin diagnosed left cervical facet-mediated pain/whiplash injury from falling and hitting the curb, resultant left occipital neuritis, and left shoulder bursitis subacromial with intact rotator cuff. He noted that appellant’s MRI scan of the cervical spine was normal.

¹¹ *T.L.*, Docket No. 16-1408 (issued June 26, 2017).

¹² *See S.B.*, Docket No. 13-1162 (issued December 12, 2013).

¹³ *Supra* note 11.

Dr. Biglin recommended that she continue her work restrictions, but did not provide objective evidence with regard to why she could no longer perform her regular work duties. Accordingly, none of the reports by the physicians at Concentra Medical Center were sufficient to meet appellant's burden of proof to establish disability commencing September 14, 2015 as none of these reports are supported by objective findings that support a recurrence of disability.¹⁴

On February 3, 2016 appellant began treatment with Dr. Mendelson and his associates. Dr. Mendelson initially diagnosed bilateral shoulder pain and neck pain. Dr. Hall examined appellant on February 10, 2016 and diagnosed low back pain and neck pain. Dr. Munk also treated appellant for cervical radiculopathy and probable rotator cuff disease. These physicians noted the dog attack and also noted that appellant's treatment was limited due to her pregnancy. In an August 3, 2016 report, Dr. Munk noted neck pain, but indicated that appellant's neck pain had improved since she gave birth in July. In a September 7, 2016 report, Dr. Mendelson noted that appellant's official problem was left shoulder fall, contusion, tendinitis, and bursitis as a direct result of her contusion. He opined that had she not fallen, she would not have this problem. Dr. Munk indicated that appellant was going to maintain her restrictions and noted that he believed that her restrictions were due to the fall that occurred when she was attacked by the dog. The Board finds that the opinions of Dr. Mendelson and his associates do not provide adequate support for appellant's alleged disability commencing September 14, 2015.

Dr. Mendelson and his associates did not provide any in depth discussion of appellant's treatment by the physicians at Concentra Medical Center, and none of them appeared to be aware that on August 24, 2015 Dr. Hazel released appellant to full duty. Without any discussion of appellant's prior medical history, it is unclear how Dr. Mendelson and his associates reached the conclusion that appellant's symptoms were causally related to the accepted employment injury. The Board further notes that these reports lack any objective evidence supporting disability commencing September 14, 2015. When a physician's report consists only of repetition of appellant's complaints that she was hurt, without objective findings of disability being shown, that physician has not presented a rationalized medical opinion establishing disability or a basis for payment of compensation.¹⁵ Finally, none of these physicians discuss appellant's employment duties nor do they provide a detailed explanation as to why she cannot perform her duties.¹⁶

The Board also notes that Dr. Paley interpreted diagnostic studies but he did not reach any conclusions on causation or disability. Accordingly, his opinion is of little probative value.¹⁷ The medical evidence of record is unsupported by rationalized medical evidence to demonstrate a claimed recurrence of total disability on September 14, 2015.¹⁸ Thus, appellant has failed to meet her burden of proof.

¹⁴ *Supra* note 11.

¹⁵ *See S.B.*, Docket No. 14-1511 (issued March 2, 2015).

¹⁶ *Supra* note 10.

¹⁷ *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

¹⁸ *See B.E.*, Docket No. 16-1480 (issued March 22, 2017).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to establish disability commencing September 14, 2015 causally related to her accepted July 27, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 18, 2016 is affirmed.

Issued: September 11, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board